

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 527 of 2019**

Reshma Sahu (wrongly written as Reshma Baghel), D/o Shri Rom Lal Sahu, Aged about 21 years, R/o Village Amsena, Thana-Aarang, District Raipur, Chhattisgarh.

---- Petitioner/Non-applicant**Versus**

Brijesh Kumar Baghel, S/o Shri Raj Kumar Baghel, Aged about 23 years, R/o Ward No. 6, Village Amsena, Thana- Aarang, District Raipur, Chhattisgarh.

---Respondent/Applicant

For Petitioners : Mr. Rakesh Dubey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****03.07.2019**

1. The respondent herein filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights before the family Court, in which petitioner herein filed primary objection and challenged the maintainability of the said application. Learned 2nd Additional Principal Judge, Family Court, Raipur rejected petitioner's objection vide order dated 15/05/2019 passed in case No. 146/2018 against which this writ petition under Section 227 of the Constitution of India has been preferred by the petitioner.
2. Learned counsel for the petitioner submits that the family Court is absolutely unjustified in rejecting petitioner's objection as she appeared before this Court in writ petition (habeas corpus) No. 24 of 2017 preferred by the respondent, which was dismissed, and the petitioner was allowed to stay with her parents. He further submits that the petitioner is being harassed by the respondent,

now that he has filed an application for restitution of conjugal rights, and thus the impugned order is liable to be set aside and the application for restitution of conjugal rights deserves to be dismissed.

3. I have heard learned counsel for the petitioner, considered his submissions and went through the records with utmost circumspection.
4. Respondent herein filed writ petition (habeas corpus) No. 24/2017, which was dismissed vide order dated 22/09/2017 by recording the below mentioned finding by the Division Bench of this Court, presided by Hon'ble the Chief Justice :-

“The petitioner has contended in the writ petition that he married Reshma. We see that Reshma, going by Annexure P/1 has passed the High School Certificate Examination following regular course of study in a Government Higher Secondary School and she cleared that Examination in Second Division. Though the petitioner has relied on Annexure P/2 and photographs which are placed collectively as Annexure P/3 and Annexure P/4 marriage certificate, Reshma has denied any relationship with the petitioner and disowns any matrimonial tie as could be recognized by us in this jurisdiction. Annexure P/4 and other documents, by themselves, are insufficient for us to hold conclusively as to any relationship which would be sufficient enough for us to even persuade Reshma to accompany the petitioner when she has clearly stated before us that she is unwilling to go with him. She is a major. Interacting with Reshma, we find that she is well oriented. She is clear in her ideas. She has asserted before us, quite modestly, but firmly, that she would not go with the petitioner, but would go with her parents. We record her such statement made to us and dismiss this

petition. Reshma, therefore, is free to go with her parents as she has chosen to do so. The petitioner has contended in the writ petition that he married Reshma. We see that Reshma, going by Annexure P/1 has passed the High School Certificate Examination following regular course of study in a Government Higher Secondary School and she cleared that Examination in Second Division. Though the petitioner has relied on Annexure P/2 and photographs which are placed collectively as Annexure P/3 and Annexure P/4 marriage certificate, Reshma has denied any relationship with the petitioner and disowns any matrimonial tie as could be recognized by us in this jurisdiction. Annexure P/4 and other documents, by themselves, are insufficient for us to hold conclusively as to any relationship which would be sufficient enough for us to even persuade Reshma to accompany the petitioner when she has clearly stated before us that she is unwilling to go with him. She is a major. Interacting with Reshma, we find that she is well oriented. She is clear in her ideas. She has asserted before us, quite modestly, but firmly, that she would not go with the petitioner, but would go with her parents. We record her such statement made to us and dismiss this petition. Reshma, therefore, is free to go with her parents as she has chosen to do so.”

5. Thereafter, the application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act has been preferred by the respondent against which petitioner raised an objection stating that the aforesaid is not maintainable, which got rejected by the family Court vide order dated 15/05/2019.
6. A careful perusal would show that this Court, in the habeas corpus preferred by the respondent herein, has only examined whether the custody of petitioner with her parents is unauthorized or not. The Court has clearly held that the documents filed are

insufficient to ascertain exclusively the relationship between petitioner and the respondent and as such, no opinion has been expressed by this Court. In that view of the matter, I do not find any merit in the writ petition.

7. This writ petition deserves to be and is accordingly dismissed. However, the petitioner is at liberty to join the proceedings before the concerned family Court and may file appropriate pleading, raising all the legally permissible grounds.

Sd/-
(Sanjay K. Agrawal)
Judge